

## **REMARKS/ARGUMENTS**

**The response to office action filed September 16, 2005, was indicated to not be in compliance with amendment practice, and in response thereto, Applicant is hereby re-submitting the claim amendments and the remarks/arguments herein.**

### **Allowable Subject Matter**

The Applicant notes the Examining Attorney has stated that claims 9, 28 and 37 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, and appreciates the same. However, the Applicant did not receive any 112 rejections, and will therefore assume that the Examiner meant to state that the forenamed claims would be allowable if amended to include all the limitations of the claims upon which they depend. Applicant is arguing to the patentability of the other claims and will further consider that after further argument on the other claims.

### **Obviousness - Section 103(a) Rejection**

The Examiner has rejected claims 1-5, 7, 10, 11, 13-19, 21-27 and 29-36, based on Section 103(a), obviousness, over Peters '202 in view of Oat-Judge '748. The Applicant respectfully requests that the Examiner reconsider the rejection for the points and authorities set forth below.

First of all, the combination of references does not include all the elements of the claims in question. If there was a bias force placed as indicated by the Examiner, when the predetermined weight of the camper is placed on the camper support, it would instead be supported by the support wheels which would support the weight of the camper since the weight would be born by frame members such as frame member 18 and frame member item 22. However claim 1 for instance states that:

the bias force is exceeded by a predetermined weight of a camper placed on the camper support surface of the support framework such that the predetermined weight of the camper is supported by the at least three support legs on a ground surface.

Therefore not all the elements of the claims are present and that is because of the different nature of the Peters reference. Furthermore, this being the case, there is no reason or motivation to make the combination and the combination is not sufficient to make out a *prima facie* case for obviousness.

Next, adding a bias force in the frame members would not make Peters work for the intended purpose, but instead would only make the legs drag when the wheels are supporting the weight.

Furthermore, there is nothing in the cited references which suggests the desirability of the combination and therefore the Examiner has not met the minimum required showing for *prima facie* obviousness.

In the U.S. Court of Appeals for the Federal Circuit case of *In Re: Lee*, 61 U.S.P.Q. 2d 1430, decided January 18, 2002, the Federal Circuit held:

... Thus, when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The Board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

The examining attorney has therefore failed to meet the requirement to set forth with specificity the general knowledge in the art to enable a finding that the person having ordinary skill in the art would make such combination.

As the PTO recognizes in MPEP 2142:

The legal concept of *prima facie* obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process.... The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of non-

obviousness.... The initial evaluation of *prima facie* obviousness thus relieves both the Examiner and Applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention.

MPEP 2143.01 provides:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re: Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

The Federal Circuit has several times expressly addressed the issue of how to evaluate an alleged case of *prima facie* obviousness to determine whether it has been properly made. Thus, *In re: Geiger* stated in holding that the PTO "failed to establish a *prima facie* case of obviousness:

Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ADC Hospital Systems, Inc. V. Monteffore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

The Applicant therefore submits that the remaining claims of the application are in a position to proceed to allowance.

### **Prior Art Made of Record and Not Relied Upon**


The Applicant notes the prior art made of record but not relied upon and asserts that for the reasons set forth above, the claims are allowable over the art made of record.

### **Conclusion**

Applicant therefore submits Claims 1-5, 7, 9-11, 13-19, 21-28 and 29-37 are in a position to proceed to allowance.

Respectfully submitted,

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